

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

PAUL REID, JR.,

Plaintiff,

v.

**THOMAS WILLIAMS, FRANTZ
SOIRO, H&M TRUCKING, INC.,
ARCH INSURANCE COMPANY,
ABC CORP., XYZ CORP., JOHN
DOE 1, and JOHN DOE 2**

Defendants.

CIVIL ACTION FILE NO.

**REMOVED FROM STATE COURT
OF FULTON COUNTY, CIVIL
ACTION FILE NO. 23EV003620**

**DEFENDANTS THOMAS WILLIAMS, H&M TRUCKING, INC. AND
ARCH INSURANCE COMPANY'S NOTICE OF REMOVAL WITH BRIEF
IN SUPPORT**

TO: The Honorable Judges of the United States District Court for the
Northern District of Georgia, Atlanta Division:

COME NOW **THOMAS WILLIAMS, H&M TRUCKING, INC. AND
ARCH INSURANCE COMPANY** (hereinafter "Defendants"), and file the
following Notice of Removal to United States District Court, showing the Court as
follows:

1. The above-styled civil action was filed on June 15, 2023 in the State Court

of Fulton County, State of Georgia. That action is designated there as Civil Action File No.: 23EV003620. Only Defendants Williams and H&M Trucking, Inc. have been personally served in the pending case. Defendant Williams was served on July 31, 2023 in Ashland County, Ohio. Defendant H&M Trucking, Inc. was served on August 28, 2023 in Douglas County, Nebraska. To Defendants' knowledge, Plaintiff has not properly served Defendant Soiro or Defendant Arch Insurance Company. This removal is therefore timely filed pursuant to 28 U.S.C. § 1446(b)(1).

2. There is complete diversity among the parties so named. The amount in controversy exceeds \$75,000.00. Plaintiff's Complaint seeks "special damages in amount of \$140,860.70" based on Plaintiff's alleged past medical expenses and, therefore, it is reasonable to infer damages in this case exceed \$75,000. Pl.'s Compl., ¶ 124.
3. Defendants file herewith a copy of all process, pleadings, and orders received by Defendants in Civil Action File No.: 23EV003640, pursuant to 28 U.S.C. §1446 (attached hereto as Exhibit "A").
4. Defendants John Does 1 and 2, ABC Corp., XYZ Corp, are currently an unknown individuals and corporations without a domicile.
5. Defendant H&M Trucking, Inc., is currently, was at the commencement of

Civil Action File No.: 23EV003640, and at all times since has been a corporation organized and existing under the laws of the State of Nebraska. (See Nebraska Secretary of State Business Records, attached hereto as Exhibit “B”).¹

6. Defendant Arch Insurance Company is currently, was at the commencement of Civil Action File No.: 23EV003640, and at all times since has been a corporation organized and existing under the laws of the State of Missouri. (See Missouri Secretary of State Business Records, attached hereto as Exhibit “C”). Defendant Arch has not been properly served with the Summons and Complaint.
7. Defendant Frantz Soiro is alleged to be a resident of Fulton County, Georgia. Pl.’s Compl., ¶ 3 (June 15, 2023). However, to the best of Defendants’ knowledge and belief, Defendant Soiro has not been properly served with the Summons and Complaint. Thus, legal precedent permits removal where, as here, a forum defendant is not properly joined and served. *See, e.g., Tex. Brine Co. v. American Arbitration Association, Inc.*,

¹ Plaintiff alleges that Defendant H&M Trucking, Inc. is a domestic corporation that may be served via its registered agent located in Gainesville, Georgia. This is incorrect. As indicated by Plaintiff’s affidavit of service, H&M Trucking was served at their principal place of business in Omaha, Nebraska. *See* Exhibits “A” and “B”.

955 F.3d 482, 486-87 (5th Cir. 2020); *Bristol-Myers Squibb Co.*, 919 F.3d 699 (2d Cir. 2019) (permitting removal by forum defendants who have not been properly served); *Encompass Ins. Co. v. Stone Mansion Restaurant Inc.*, 902 F.3d 147 (3d Cir. 2018) (ruling that § 1441(b)(2)’s language was unambiguous and “[i]ts plain meaning precludes removal ***only when the defendant has been properly joined and served***”) (emphasis added); *Rodgers v. Tyson Foods, Inc.*, No. 1:20-CV-4127-MLB, 2021 WL 2603710, at *2 (N.D. Ga. Apr. 27, 2021) (noting that the language § 1441(b) is “plain and unambiguous” and only prohibits removal “if a forum defendant is properly joined and served”, and ruling “this Court concludes § 1441(b) permits the practice known as snap removal”); *Gibson v. Wal-Mart Stores East, LP*, 2010 WL 419393, at *2-4 (M.D. Ga. 2010) (quoting *Wensil v. E.I. Dupont de Nemours and Co.*, 792 F.Supp. 447, 448-49 (D.S.C. 1992) (“The statute is clear. The presence of unserved resident defendants does not defeat removal where complete diversity exists.”)).

8. Upon information and belief, Plaintiff is an individual residing in the State of Georgia. Pl.s’ Compl. ¶ 1. If a person is domiciled in [Georgia], he was a citizen of that state within the meaning of the Judicial Code. *Gilbert v. David*, 235 U.S. 561, 569 (1915).

9. The action described above is a civil action with a claim of which this Court has original jurisdiction, and it is one that may be removed to this Court by the Defendants pursuant to the provisions of 28 U.S.C. §§ 1332 and 1441 et seq., in that there is complete diversity among the “properly joined and served” Parties, the “properly joined and served” Parties are not residents of the same State, and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.
 - a. All parties “properly joined and served” to this action are completely diverse. Plaintiff is a citizen of the State of Georgia. The only Defendant that has been properly joined and served is Defendant Williams, who is a resident of the State of Ohio. The existence of diversity jurisdiction is determined by the citizenship of the parties at the time of the filing of the complaint, not at the time the cause of action arose or after the action is commenced. *Oh v. Ford Motor Co.*, 79 F. Supp. 2d 1375, 1377 (N.D. Ga. 1999) (citing *Mann v. City of Tucson, Dept. of Police*, 782 F.2d 790, 794 (9th Cir. 1986)). Because Plaintiff has failed to “properly join and serve” Defendant Soiro, the only alleged forum Defendant, Defendants are permitted to seek removal pursuant to the plain text of 28 U.S.C. § 1441(b).

b. Plaintiff's Complaint expressly states that he received "medical treatment for his injuries of at least \$140,860.70", which vastly exceeds the \$75,000 jurisdictional requirement. Thus, on its face, the Complaint establishes by a preponderance of the evidence that the "matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs." 28 U.S.C. § 1332(a).

10. Defendants attach hereto a copy of Defendants' Notice of Removal which has been sent for filing in the State Court of Fulton County, State of Georgia, marked as Exhibit "D".

11. Defendants Williams and H&M Trucking, Inc., being the only Defendants properly joined and served, consent to this removal.

WHEREFORE Defendants Williams, H&M Trucking, Inc., and Arch Insurance Company pray that the above action now pending against them in the State Court of Fulton County, State of Georgia, be removed to this Court.

Respectfully submitted this 30th of August, 2023.

Quintairos, Prieto, Wood & Boyer, P.A.

/s/ Paul Trainor

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DEFENDANT DEMANDS
TRIAL BY JURY

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CERTIFICATE OF COMPLIANCE

The foregoing **DEFENDANTS' NOTICE OF REMOVAL WITH BRIEF
IN SUPPORT** is double spaced in 14-point Times New Roman font and complies with the type-volume limitation set forth in Local Rule 7.1.

Respectfully submitted this 30th of August, 2023.

Quintairos, Prieto, Wood & Boyer, P.A.

/s/ Paul Trainor

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the within and foregoing **DEFENDANTS' NOTICE OF REMOVAL WITH BRIEF IN SUPPORT** with the Clerk of Court electronically which will automatically send an e-mail notification of such filing to the following:

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Counsel for Plaintiff

Respectfully submitted this 30th of August, 2023.

Quintairos, Prieto, Wood & Boyer, P.A.

/s/ Paul Trainor

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